Kerajaan Sarawak & Anor v Abdul Wahab bin Abdullah

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q-01–113 OF 2004
ABDUL AZIZ MOHAMAD, AZMEL AND ZALEHA ZAHARI JJCA
27 FEBRUARY 2007

Administrative Law — Judicial review — Application for — Review of State Government's exclusive and discretionary power — Whether application ought to be allowed

Public Servants — Contract — Contract of employment — Terms and conditions of service — Whether public servants served at the pleasure of the Yang di-Pertua Negeri or Government — Whether public servants had the right to choose where to serve

Statutory Interpretation — Construction of statutes — Fundamental rule — Whether duty of court to discover true intention of legislature

Statutory Interpretation — Construction of statutes — Rules of construction — Words used precise and unambiguous — Whether literal and strict approach to construction called for

The respondent public officer was employed in the Sarawak Forests Department ('SFD'). On 1 January 1998 ('the appointed date'), the Sarawak State Government ('the Government') brought into force the Sarawak Forestry Corporation Ordinance 1995 ('the Ordinance'), which Ordinance established the Sarawak Forestry Corporation ('SFC'). The SFC was established to take over most of the functions of the SFD. In this regard, s 11(3) of the Ordinance expressly provided that the powers of the SFC would not include the powers vested in the Director of the SFD. Section 16(1) of the Ordinance further provided that the SFC would on the appointed date 'accept into its employment every person who immediately before that date is in the employment or service of the Forests Department, Sarawak and who was given an option by the Government and has opted to serve as an employee of the Corporation'. It was not disputed that the respondent and the litigants he represented were all employees of the SFD on the appointed date. The Government subsequently decided not to grant the option prescribed under s 16(1) of the Ordinance to all officers serving in the SFD. The respondent and the litigants were among those not given the option. The respondent contended that it was mandatory for the Government to issue such an option to all employees in the employment of the SFD at the appointed date. The Government however disagreed, contending that it was not under any legal duty to extend options to all such employees. The respondent brought a representative action seeking inter alia to quash the

A decision of the Government and to compel it to extend options to all such employees. At first instance, the High Court allowed the respondent's action and granted the reliefs sought. The Government appealed to the Court of Appeal. The main issue before the Court of Appeal thus concerned the proper construction of s 16 of the Ordinance.

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Held, allowing the Government's appeal:

(1) The governing principle of interpretation requires the court when construing a statute, to discover the true intention of the Legislature. In so doing the court C is bound to adopt an approach that promotes the purpose or object of the particular statute. To ascertain the meaning of a clause in a statute, the court must look at the whole statute. The court must look at what precedes and succeeds it, and not merely at the clause itself (see para 16).

(2) The purposive approach to the interpretation of legislation only applies where D doubt arises from the terms or words employed by the Legislature. Where the words used are precise and unambiguous, the literal and strict construction rule should apply (see para 16).

(3) The legal effect of the declaratory order and the order of mandamus issued by the High Court compelling the Government to give the option under s 16(1) E of the Ordinance clearly produced a result which the law did not countenance. It clearly contravened art 132(2A) of the Federal Constitution that provides for public service officers to serve at the pleasure of the Yang di-Pertua Negeri or the Government. For as long as the respondent and those whom he represented remained state public officers, they would serve at the pleasure of the F Government. They would not have the right to choose where they were to serve (see para 27);*Pengarah Pelajaran, Wilayah Persekutuan & Ors v Loot Ting Yee* [1982] 1 MLJ 68 referred.

(4) The High Court judge erred in adopting a purposive approach to the interpretation of s 16(1) of the Ordinance. This approach was clearly not in accord with the Legislative intent. The judge had also erred in reviewing the G exercise of the discretionary power of the Government not to grant the option to the respondent and those whom he represented (see para 29).

(5) On a proper construction of the Ordinance and its relevant provisions, it was not mandatory for the Government to grant to all officers serving in the SFD H on the appointed date the option under s 16(1) of the Ordinance to join the employment of the SFC (see para 30).

[Bahasa Malaysia summary

I Responden pegawai am yang diambil bekerja di Jabatan Perhutanan Sarawak ('JPS'). Pada 1 Januari 1998 ('tarikh pelantikan'), Kerajaan Negeri Sarawak ('Kerajaan') mula menguatkuasakan Ordinan Perbadanan Perhutanan Sarawak 1995 ('Ordinan'), yang merupakan Ordinan yang menubuhkan Perbadanan Perhutanan Sarawak ('PPS'). PPS telah ditubuhkan untuk mengambil alih kebanyakan daripada fungsi JPS. Berhubung ini, s 11(3) Ordinan dengan jelas memperuntukkan bahawa kuasa PPS

tidak termasuk kuasa yang diberikan kepada Pengarah JPS. Seksyen 16(1) Ordinan juga memperuntukkan bahawa PPS akan pada tarikh pelantikan 'accept into its employment every person who immediately before that date is in the employment or service of the Forests Department, Sarawak and who was given an option by the Government and has opted to serve as an employee of the Corporation'. Ia tidak dipertikaikan bahawa responden dan litigan-litigan yang beliau wakili kesemuanya pekerja JPS pada tarikh pelantikan. Kerajaan berikutan itu memutuskan untuk tidak memberikan pilihan tersebut seperti yang ditetapkan di bawah s 16(1) Ordinan kepada semua pegawainya dalam JPS. Responden dan litigan-litigan tersebut adalah mereka yang tidak diberikan pilihan itu. Responden menegaskan bahawa ia adalah mandatori untuk Kerajaan untuk memberirkan pilihan sedemikian kepada semua pekerja dalam penggajian JPS pada tarikh pelantikan. Kerajaan bagaimanapun tidak bersetuju, dengan menegaskan bahawa ia bukan di bawah apa-apa tanggungjawab sah untuk memberikan pilihan tersebut kepada semua pekerja. Responden telah memulakan satu tindakan representasi memohon antara lain untuk membatalkan keputusan Kerajaan dan memaksanya untuk memberikan pilihan tersebut kepada semua pekerja. Pada mulanya, Mahkamah Tinggi membenarkan tindakan responden dan memberikan relif-relif yang dipohon. Kerajaan merayu ke Mahkamah Rayuan. Isu utama di hadapan Mahkamah Rayuan adalah berkaitan pembentukan sebenar s 16 Ordinan.

Diputuskan, membenarkan rayuan Kerajaan:

(1) Prinsip utama pentafsiran memerlukan mahkamah apabila mentafsirkan suatu statut, untuk mendapat tahu tentang niat sebenar badan perundangan. Dengan berbuat demikian mahkamah terikat dengan pendekatan yang menggalakkan tujuan atau objektif statut tertentu. Untuk memastikan maksud suatu klausa dalam suatu statut, mahkamah hendaklah melihat keseluruhan statut. Mahkamah hendaklah melihat apa yang terdahulu dan yang menggantikannya, dan bukan hanya pada klausa itu sendiri (lihat perenggan 16).

(2) Pendekatan bertujuan dalam pentafsiran perundangan hanya terpakai di mana timbul keraguan dalam terma-terma atau perkataan-perkataan yang digunakan oleh badan Perundangan. DI mana perkataan-perkataan yang digunakan adalah tepat dan tidak taksa, rukun pembentukan harfiah dan ketat patut terpakai (lihat perenggan 16).

(3) Kesan perundangan perintah deklarasi dan perintah mandamus yang dikeluarkan oleh Mahkamah Tinggi memaksa Kerajaan untuk memberikan pilihan di bawah s 16(1) Ordinan dengan nyata memberikan hasil yang tidak dipersetujui oleh undang-undang. Ia jelas bercanggah dengan perkara 132(2A) Perlembagaan Persekutuan yang memperuntukkan pegawai perkhidmatan am untuk bekerja atas permintaan Yang di-Pertua Negeri atau Kerajaan. Selagi responden dan mereka yang beliau wakili masih pegawai am kerajaan, mereka akan berkhidmat atas permintaan Kerajaan. Mereka tidak mempunyai hak untuk memilih di mana mereka akan berkhidmat (lihat perenggan 27); *Pengarah Pelajaran, Wilayah Persekutuan & Ors v Loot Ting Yee* [1982] 1 MLJ 68 dirujuk.

(4) Hakim Mahkamah Tinggi terkhilaf keran menggunakan pendekatan bertujuan untuk pentafsiran s 16(1) Ordinan. Pendekatan ini jelas tidak menurut niat badan perundangan. Hakim juga terkhilaf dalam meneliti penggunaan kuasa budi bicara Kerajaan untuk tidak memberikan pilihan kepada responden dan kepada mereka yang beliau wakili (lihat perenggan 29).

(5) Berdasarkan pembentukan teratur Ordinan dan peruntukan-peruntukannya yang relevan, ianya tidak mandatori untuk Kerajaan memberikan kepada kesemua pegawai yang berkhidmat dalam JPS pada tarikh pelantikan pilihan di bawah s 16(1) Ordinan untuk masuk bekerja dengan JPS (lihat perenggan 30).]

Notes

For cases on contract of employment of public servants, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) para 1859–1862.

For a case on fundamental rule, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) para 1877.

For cases on application for judicial review, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 198–208.

For cases on rules of construction, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2013–2031.

Cases referred to

Pengarah Pelajaran, Wilayah Persekutuan & Ors v Loot Ting Yee [1982] 1 MLJ 68 (refd)

Legislation referred to

Federal Constitution arts 132(2) and (2A)
Forests Ordinance s 2(2)
Sarawak Forestry Corporation Ordinance 1995 ss 4, 10, 11(3), 12, 13, 14, 16(1), (2), (3)
Sarawak Interpretation Ordinance 2005 s 8A

Appeal from: Application for Judicial Review No JR–03 of 2004-III(I) (High Court, Kuching)

Datuk JC Fong (Peguam Besar Negeri Sarawak) for the appellants.
Abdul Rahman bin Haji Mohamad Hazmi (Abdul Rahman & Partners) for the respondent.

Zaleha Zahari JCA (delivering judgment fo the court):

[1] This appeal is against the decision of the Kuching High Court dated 7 December 2004. By that order the High Court granted the application sought by the applicant (respondent before us). It was the unanimous decision of this court on 14 September 2005 that this appeal be allowed with costs. Our reasons are as follows.

[2] The application for judicial review was instituted by the respondent on his own behalf and as a representative of all other affected members of the Sarawak Forests Department Employees Union ('the Union') in the employment of the Sarawak Forests Department ('SFD') at 1 January 1998 ('the appointed date'), which date is the date of coming into force of the Sarawak Forestry Corporation Ordinance 1995 ('the Ordinance'). The third respondent cited in the court below was no longer a party to the High Court proceedings after having successfully applied to be struck out on 28 May 2004. A B

[3] The factual matrix against which the application was allowed by the High Court judge is as follows. The respondent, a 'Penolong Pemilihara Hutan', is a public officer in the State Public Service, Sarawak serving in the SFD. He is also the President of the Union. C

[4] Upon the coming into force of the Ordinance, the Sarawak Forestry Corporation (the second appellant, subsequently referred as 'SFC') was established to take over most of the functions of the SFD. The functions of the SFC are set out in s 10, whilst its powers are set out in s 11 of the Ordinance. We don't purpose to set them all out here at this stage. Suffice for us to state that s 11(3) of the Ordinance expressly provides that the powers of the SFC shall not include the following: D

> For the avoidance of doubt, the powers of the Corporation shall not include the powers vested in the Director under the Forests Ordinance or National Parks and Nature Reserves Ordinance or the Wild Life Protection Ordinance 1990. E

[5] It is not in issue that the respondent and those whom he represents were employees of the SFD on the appointed date. The complaint of the respondent rests on the decision of the first appellant, the Government of Sarawak ('the Government') not to grant the option prescribed under s 16(1) of the Ordinance to all officers serving in the SFD on the appointed date to join the newly established SFC. F

[6] Section 16 falls under Part IV of the Ordinance entitled 'PROVISIONS RELATING TO EMPLOYEES' which Part deals with the manpower requirements of the SFC. It reads as follows: G

> 16(1) The Corporation shall on the appointed day accept into its employment every person who immediately before that date is in the employment or service of the Forests Department, Sarawak and who was given an option by the Government and has opted to serve as an employee of the Corporation. H
>
> (2) Every such person who opts under subsection (1) to serve as an employee of the Corporation shall be employed by the Corporation on terms and conditions of service to which he is entitled to immediately before the date mentioned in subsection (1).
>
> (3) Until such time as the terms and conditions of service including the conduct and discipline of its employees are drawn up for and by the Corporation the scheme and terms and conditions of service including the conduct and discipline of officers in the State Public Service shall mutatis mutandis continue to apply to every person employed by the Corporation under subsection (1). I

[7] We consider it necessary to also set out art 132 of the Federal Constitution, which was raised in argument by the appellants as the provision with which s 16 of the Ordinance should be read. It reads as follows:

> 132. (1) For the purposes of this Constitution, the public services are —
>
> (a) ...
>
> (g) the public service of each State; and
>
> (h) ...
>
> (2) Except as otherwise expressly provided by this Constitution, the qualifications for appointment and conditions of service of persons in the public services other than those mentioned in paragraph (g) of Clause (1) may be regulated by Federal Law and, subject to the provisions of any such law, by the Yang di-Pertuan Agong; and the qualifications for appointment and conditions of service of persons in the public service of any State may be regulated by State Law and, subject to the provisions of any such law, by the Ruler or Yang di-Pertua Negeri of that State.
>
> (2A) Except as expressly provided by this Constitution, every person who is a member of any of the services mentioned in paragraphs (a),(b),(c),(d),(f) and (h) of Clause (1) holds office during the pleasure of the Yang di-Pertuan Agong, and, except as expressly provided by the Constitution of the State, every person who is a member of the public service of a State holds office during the pleasure of the Ruler or Yang di-Pertua Negeri.

[8] It is common ground that the respondent issued a letter to the Government on 25 March 2004 demanding that an option under s 16 of the Ordinance be issued to all officers serving in the SFD on the appointed date within seven days of the said letter failing which legal proceedings would be instituted. Another letter to the same effect was issued by the respondent's legal adviser to the Government on 5 April 2004.

[9] On 8 April 2004 the Sarawak State Attorney General's Chambers acting on behalf of the Government responded to the respondent's letter. According to this letter issued to the respondent's legal adviser, the respondent was informed that there was no legal duty on the part of the Government to issue the option under s 16(1) of the Ordinance to all officers serving in the SFD on the appointed date as contended by the respondent.

[10] In the light of the above, on 16 April 2004, the respondent filed an application for judicial review for an order of certiorari to quash the decision of the Government dated 8 April 2004. He also sought a declaratory order that it was mandatory for the Government to issue an option under s 16 to all employees of the SFD who were in the employment of the SFD as at 1 January 1998, as well as an order of mandamus compelling the Government to issue such option. The application for judicial review made reference to ss 4, 10, 11, 12, 13, 14 and 16 of the Ordinance. In argument before us, reliance was only placed on ss 11 and 16 of the Ordinance.

THE HIGH COURT DECISION

[11] The learned judge found for the respondent and granted the orders sought. In making the decision which he did he considered it appropriate to apply s 8A of the Sarawak Interpretation Ordinance 2005 and adopted a purposive approach in the interpretation of s 16.

[12] The judge took the view that the enactment of s 16 in its present terms was to cater for the human resource and manpower requirements of the SFC. He construed the intention of the Legislature to be that the manpower requirements of the SFC were to be primarily sourced from the SFD. He took the view that the Legislature was cognizant of the difference between being a member of the State Public Service and being an employee of a Statutory Corporation and of the fact that employees of the SFD affected by s 16(1) of the Ordinance cannot be forced to accept a change in their status without their consent. The judge accordingly was of the view that the purpose of s 16(2) and (3) of the Ordinance is to ensure that employees of the SFD who exercised the option to serve the SFC are employed on terms and conditions of service not less favourable than those which they were enjoying immediately before 1 January 1998, and the purpose of s 16(1) is to enable employees of the SFD affected by the section to decide for themselves whether to serve in the SFC or to remain in the State Public Service.

[13] The judge then concluded that s 16(1) of the Ordinance imposed a duty upon the Government to give to all officers serving in the SFD as at 1 January 1998 the option referred to in the said section. He interpreted the words in s 16(1) to mean that it was the intention of the Legislature to confer upon such employees the right to decide for themselves whether to exercise the s 16(1) option offered, ie to serve in the SFC or to remain in the State Public Service.

[14] On the argument advanced by the appellants that such a construction would contravene the constitutional principle that public officers serve during the pleasure of the Government as enshrined in arts 132(2) and (2A) of the Federal Constitution, the judge summarily dismissed this argument on the ground that the authorities cited in support of such a proposition were inapplicable as those cases were distinguishable on the facts as they related to the transfer of a public officer, which this case was not.

[15] The main issue in the court below as well as before us is, what is the proper construction to be given to s 16(1) of the Ordinance? Was the Government under a duty in law to issue to the respondent and those whom he represents, the option prescribed in s 16(1) of the Ordinance?

[16] Before setting out the rival arguments in this appeal we would like to state the principles which we would be applying in making a considered decision on the issue in question. The governing principle of interpretation is that, in construing a statute, the function of the court is to discover the true intention of the legislature. In that process the court is under a duty to adopt an approach that promotes the purpose or object underlying that particular statute. To ascertain the meaning of a clause in a statute, the court must look at the whole statute, at what precedes and what succeeds it, not merely at the clause itself. It is a well established principle that the purposive approach to the interpretation of legislation only applies where doubt arises from the terms or words employed by the Legislature. Where the words used are precise and unambiguous, then the literal and strict construction rule should apply.

[17] The Sarawak Attorney General submitted that the learned judge erred in construing the words in s 16(1) as imposing upon the Government a duty to grant

to employees serving in the SFD on the appointed date the option under s 16(1). The conditions prescribed in s 16(1) were cumulative. It was mandatory for the SFC to accept into its employment a person who satisfied all of the conditions specified. They must have, immediately before the appointed date, been serving in the SFD. They must also have received an option by the Government to join the SFC. Upon being given such an option, such person must have exercised the option granted to serve as an employee of the SFC.

[18] The learned Sarawak Attorney General argued that there clearly is nothing in s 16(1) making it mandatory for the Government to give the option to all officers serving in the SFD on the appointed date. Datuk Fong submitted that no words should therefore be imported into the said provision imposing such an obligation on the Government. Giving the words in s 16(1) their plain and ordinary meaning, the Government has a discretion whether or not to give the prescribed option to officers then serving in the SFD.

[19] He emphasized the fact that although many of the functions and powers exercised by the SFD would be performed by the SFC subsequent to its establishment, the undisputed fact is that the SFD continues to exist to carry out the statutory duties and functions described by the Director of Forests, Datu Cheong Ek Choon, in his affidavit affirmed on 3 July 2004, inter alia, the preparation and granting or issue of forest licences, the issue of sawmill licences, the granting of authorization under s 2(2) of the Forests Ordinance for the transfer of shares in forest licences issued to companies, the preparation and development of forest management plans as well as the rendering of assistance to the Government in the formulation of policies relating to forestry and sustainable forestry management. Section 11(3) of the Ordinance is especially significant.

[20] In this situation Datuk Fong submitted that the words in s 16(1) must necessarily be interpreted to mean that the Government is the authority to decide as to which employee should be offered the option to join the SFC, and which employee is to continue to remain and serve in the SFD (or in the State Public Service) consequential upon the establishment of the SFC.

[21] According to Datuk Fong the judge therefore erred in not giving the words in s 16(1) their plain and unambiguous meaning and in adopting a purposive approach of interpretation. Such an interpretation has produced a result which the law does not countenance and has created an injustice to the Government. By compelling the Government to grant an option to all public officers serving in the SFD on the appointed date, the judge clearly has not given proper consideration to the fact that the SFD continues to exercise the statutory duties and functions not exercisable by the SFC.

[22] Datuk Fong further submitted that the construction that it is for the Government to decide who should not be offered the option to move to serve in the newly created SFC but be retained to serve in the SFD or in the State Public Service would be in accord with the enshrined principle prescribed in art 132A of the Federal Constitution that State Public Officers serve at the pleasure of the Yang di-Pertua

Negeri or the Government. For so long as the respondent and those whom he represents continue to be in the State Public Service, it is for the Government to decide where they should serve. The decision of the Government in this case is that, the respondent and those whom he represents, are to remain in the Public Service of the State. In this circumstance the application for judicial review based on the premise that the respondent and those whom he represents have the right to choose 'their own entity and destiny' is not sustainable in law and should accordingly have been rejected by the High Court judge.

[23] In his written submissions the respondent's counsel argued that read against the background facts, the words in s 16(1) merely meant that the Government was the authority to eliminate and exclude those employees of the SFD who were not in the employment of the SFD as at the appointed date of 1 January 1998 from being issued the prescribed option. The statement of the Chief Minister and the Minister For Planning And Resource Management of Sarawak as reported in his 'Perutusan' stating that the opportunity to serve the SFC would be given to most ('kebanyakan') of the 2000 employees of the SFD and the rest ('selebihnya') would remain in the SFD and Sarawak Biodiversity Centre or National Parks was supportive testimony of this proposition.

[24] As to the statutory functions not vested in the SFC by reason of s 11(3) of the Ordinance which continue to be discharged and exercised by the Director of Forests, according to the respondent's Counsel, this was not a material factor for consideration as s 16 must to be taken as the governing provision by reason of it being the provision dealing with the manpower requirements of the SFC. The respondent's Counsel submitted that, notwithstanding the fact that the Director of Forests retained certain statutory powers and duties, this should not be construed as precluding the Government from issuing the s 16(1) option. The respondent's Counsel submitted that there was, on the facts of this case, non-compliance with, or a misinterpretation of s 16(1), when the Government failed to issue the option to all employees of the SFD on the appointed date, contrary to their mandatory duty to do so. He submitted that the learned High Court judge was right in issuing the orders which he did; in quashing the decision of the Government not to grant the s 16(1) option to the respondent; in issuing the declaratory order sought, as well as in issuing an order of mandamus compelling the Government to issue the option under s 16(1) of the Ordinance to all officers in the SFD on the appointed date to enable them to 'choose their own entity and destiny', whether to exercise the option and be an employee by the SFC, or continue to serve in the SFD.

[25] Our findings are as follows: The only words in s 16(1) of the Ordinance dealing with option are the words 'who was given an option by the Government'. The question here is whether the judge was right in adopting a purposive approach in the interpretation of s 16(1) and in arriving at the conclusion which he subsequently did?

[26] On the facts of this case we took note of the fact that the Government has made a decision that the respondent and those whom he represents should remain in the service of the SFD. It is common ground that the respondent and those whom

he represents, continue to be public officers of the State Public Service as a result of the option under s 16(1) of the Ordinance not being issued to them, and that they have also not been dismissed or reduced in rank.

[27] After careful consideration of arguments before us we are in agreement with the submissions of the learned Sarawak Attorney General and not that of the respondent's counsel. The legal effect of the declaratory order and the order of mandamus issued by the judge in compelling the Government to give the option under s 16(1) of the Ordinance has clearly produced a result which the law does not countenance and is clearly in contravention of art 132(2A) of the Federal Constitution that Public Service Officers serve at the pleasure of the Yang di-Pertua Negeri or the Government. For so long as the respondent and those whom he represents remain State Public Officers, they serve at the pleasure of the Government and do not have the right to choose where they are to serve (see *Pengarah Pelajaran, Wilayah Persekutuan & Ors v Loot Ting Yee* [1982] 1 MLJ 68, p 69).

[28] As to the respondent's reliance on the statement of the Minister in the 'Foreword' to the 'Buku Cenderamata Sempena Seminar Pengkoporatan Menjamin Hak Pekerja Dan Hutan Berkekalan', this statement does not assist the respondent but is in favour of the appellants. The word 'most' means that a 'majority', not all, will be offered the opportunity to join the SFC. There will be some officers in the SFD who would not be given the option to join the SFC by reason of the undisputed fact that the SFD continues to function to carry out duties and functions not transferred or vested in the SFC as provided by s 11(3) of the Ordinance and the necessity of some officers having to be retained to continue to serve in the departments mentioned by the Minister in that statement. These facts point strongly to the intention of the legislature that it is not mandatory for all officers serving in the SFD on the appointed date to be offered the option to join the SFC.

[29] We accordingly hold that the judge had erred in adopting a purposive approach to the interpretation of s 16(1), which approach is clearly not in accord with the legislative intent. We also are of the opinion that the judge had erred in reviewing the exercise of the discretionary power of the Government not to grant the option to the respondent and those whom he represents in a matter which is solely for the Government to decide.

[30] To conclude, upon reading the Ordinance as a whole and giving the words in s 16(1) their plain, ordinary and unambiguous meaning, as well as in giving effect to s 11(3) read together with art 132A (2) of the Federal Constitution, and in giving effect to the intention of the legislature that some officers must remain in the SFD, we hold that it is not mandatory for the Government to grant to all officers serving in the SFD on the appointed date the option under s 16(1) of the Ordinance to join the employment of the SFC.

[31] For the reasons given, the appeal was allowed with costs. The orders of the learned judge of the court below were set aside. The application of the respondent

was dismissed. We further directed that the costs of this appeal and the court below be paid to the appellants. The deposit shall be paid to the appellants towards taxed costs.

Government's appeal allowed.

Reported by Andrew Christopher Simon